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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Conservatorship of the Person of
CHRISTOPHER A.

SAN DIEGO COUNTY HEALTH &
HUMAN SERVICES AGENCY,

Petitioner and Respondent,

v.

CHRISTOPHER A.,

Objector and Appellant.

D049672

(Super. Ct. No. MH98397)

APPEAL from orders of the Superior Court of San Diego County, Eugenia
Eyherabide, Judge. Appeal dismissed.

In 2003 Christopher A. was declared a conservatee under the Lanterman-Petris-Short Act (LPS Act) (Welf. & Inst. Code, § 5350 et seq.). In June 2006, it was the opinion of a San Diego County psychiatrist that Christopher was unable to provide for his own food, clothing and shelter because of mental illness. On August 7, 2006, the trial

court reestablished the conservatorship of the person of Christopher after he consented to the reestablishment. On October 10, the court denied a motion to vacate the conservatorship order.

DISCUSSION

Christopher's appointed counsel advises us he is unable to find any issue to raise on appeal, and, citing *Anders v. California* (1967) 386 U.S. 738 (*Anders*) and *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), he asks that we independently review the record to determine whether any arguable appellate issue exists. We gave Christopher 30 days to file a supplemental brief on his own. He has not responded.¹ We deny the request to independently review the record and we dismiss the appeal.

In *Anders*, the United States Supreme Court held that when appointed counsel conducts a conscientious examination of the proceedings but finds no meritorious ground in a criminal defendant's first appeal as of right, counsel should advise the court and request permission to withdraw. To protect the defendant's constitutional right to assistance of counsel, the "request must . . . be accompanied by a brief referring to anything in the record that might arguably support the appeal" (*Anders, supra*, 386 U.S. at p. 744), and a copy of the brief should be provided to the indigent defendant and time given to enable he or she to "raise any points that he [or she] chooses." (*Ibid.*) The

¹ While Christopher has not personally responded, the court received a letter from H.L. Roy Short, an attorney who was associated with Christopher's trial counsel but not his counsel on appeal. Short raises possible appellate issues. Because Christopher has not personally responded to our offer to receive a supplemental brief and Short is not his counsel of record in this appeal, we reject Short's request we consider the possible issues he raises.

appellate court fully examines all the proceedings to decide whether the appeal is "wholly frivolous." (*Ibid.*) In *Wende*, California's Supreme Court held that in a criminal appeal *Anders* requires the court to review the entire record whenever appellate counsel submits a brief that raises no specific issues. (*Wende, supra*, 25 Cal.3d at pp. 441-442.)

In *In re Sade C.* (1996) 13 Cal.4th 952 (*Sade C.*) the California Supreme Court held that *Wende* and *Anders* should not be extended to juvenile dependency proceedings. The court said, "[b]y its very terms, *Anders*'s 'prophylactic' procedures are limited in their applicability to appointed appellate counsel's representation of an indigent *criminal defendant* — and there only in his [or her] first appeal as of right. An indigent parent adversely affected by a state-obtained decision on child custody or parental status is simply not a criminal defendant. Indeed, the proceedings in which he [or she] is involved must be deemed to be civil in nature and not criminal. [Citation.] To quote Chief Justice Burger's concurring opinion in *Lassiter v. Department of Social Services* (1981) 452 U.S. 18, 34 . . . , they are simply 'not "punitive."' That they may be said to 'bear[] many of the indicia of a criminal trial' [citation] goes to form and not to substance. As a consequence, they are far removed from the object of the *Anders* court's concern, which was the first appeal as of right *in a criminal action*." (*Sade C., supra*, 13 Cal.4th at p. 982.)

In *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, after discussing the differences between criminal matters and LPS matters (*id.* at pp. 536-543), the California Supreme Court concluded that the principles expressed in *Sade C.*, not those established by *Anders* and *Wende*, apply when reviewing an appeal of an order for conservatorship of the person under the LPS Act. Thus, we do not independently review the record for error

in an appeal from a judgment appointing a conservator or reestablishing a conservatorship. Here, on October 12, 2006, Christopher filed his appeal from the order dated August 7, 2006 reestablishing his conservatorship and an order of October 10, 2006 denying his motion to vacate the August 7 order reestablishing the conservatorship. The appeal is dismissed as untimely. (Cal. Rules of Court, rule 8.104(a)(1) & 8.104(d)(2).) Filing a petition to vacate the August 7 order did not extend the time to file the appeal because the petition was not filed within 60 days of the August 7 order. (See *English v. Ikon Business Solutions, Inc.* (2001) 94 Cal.App.4th 130, 135.)

DISPOSITION

The appeal is dismissed.

McCONNELL, P. J.

WE CONCUR:

HUFFMAN, J.

McINTYRE, J.